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No. 748

In the Supreme Court of the United States

October Term, 1970

John Albert Bakewell, Petitioner

v.

United States of America

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONER'S REPLY BRIEF

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QUESTION PRESENTED

Whether a sentence of imprisonment and its affirmance on appeal violate the due process clause of the Fifth Amendment and the confrontation and assistance of counsel clauses of the Sixth Amendment where the judge rejected counsel's request that the information in the presentence investigation report be divulged so that he could correct any errors contained therein and the report did contain false and misleading derogatory information.

REPLY TO THE BRIEF FOR THE UNITED STATES

In reply to three points raised in the Brief for the United States in Opposition, petitioner says:

1. The Brief for the United States erroneously states that ". . . petitioner could have been imprisoned for up to five years or fined up to $10,000.00 or both." (Brief for the United States in Opposition, page 2, footnote 2). When petitioner was indicted the offense defined by 21 U.S.C. 331 (q) (2) was a misdemeanor and the punishment prescribed for violation of that statute was imprisonment up to one year or a fine up to $1,000.00 or both.

2. The Brief for the United States correctly states that ". . . petitioner in this case made no request to see the contents of the presentence investigation report before sentencing" (Brief for the United States in Opposition, page 4). No request was made because statements by the sentencing judge gave the impression that the presentence investigation report did not contain any significant information derogatory to petitioner:

> "The Court: . . .
>
> "The court has been furnished a Pre-Sentence Investigation and Report which I have carefully examined, and there is no record therein, as such, of any convictions or any previous offenses against you. I notify you of that.
>
> "There is a report from you that you had some traffic offenses but there have been no serious criminal offenses.
>
> "THE DEFENDANT: No, sir.
>
> "THE COURT: And of course that stands in your favor.
>
> "I mention that because if there were, I would hand them to you and ask you to confirm or deny them; but, since there are none, we won't have that." (Appellant's Appendix to brief in court of appeals, A23-A24)

Petitioner does not assert that the sentencing judge intended to mislead, but the effect of the judge's statements was to lull petitioner and his counsel into assuming that the presentence report correctly stated petitioner's offense and his role in illegal drug traffic, when in fact the report was grossly inaccurate.

3. The Brief for the United States erroneously asserts that "At no point in the record, however, is there any indication that the court considered anything other than the 20,015 pills that petitioner had admitted selling when he pleaded guilty." (Brief of the United States in Opposition,page 5, footnote 3). This statement is inaccurate for two reasons.

First, it gives the impression that petitioner was guilty of more than one sale when in fact the information to which he pleaded guilty alleged only one sale in which 20,015 amphetamine tablets were sold in a single transaction.

Second, at sentencing the judge said "The court has been furnished a presentence investigation report which I have carefully examined . . . "(Appellant's Appendix to brief in court of appeals, A23). In stating the official version of petitioner's offense the presentence report says: "Federal agents reported that at least 5,000,000 tablets passed through the hands of the defendant, and that this operation was dealing in the illegal traffic of amphetamine tablets in large quantities." (Appellant's Appendix to brief in court of appeals, A69). In his evaluative summary the probation officer who drafted the presentence report said: "Bakewell was involved in the possession and sale of illegal drugs throughout the southeastern United States. Agents reported that an estimated 5,000,000 units passed through the hands of the defendant. Primarily, Bakewell was selling only in large quantities to persons who broke these units down and sold them illegally." (Appellant's Appendix to brief in co rt of appeals, A75).

These statements in the presentence report are inaccurate and grossly exaggerate petitioner's participation in illegal drug traffic. He believes that reliance upon these and other misstatements in the presentence report by the sentencing judge resulted in a more severe sentence than would otherwise have been imposed. Petitioner believes that the sentence imposed upon him is based on false and misleading derogatory information which he or his counsel did not have an opportunity to know of, or to rebut. He would like the opportunity to present the true facts to the sentencing judge. This is the basis of his request that a writ of certiorari issue to the United States Court of Appeals for the Fifth Circuit.

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